

Federal Court



Cour fédérale

Date: 20100708

Docket: T-736-10

Citation: 2010 FC 739

Vancouver, British Columbia, July 8, 2010

**PRESENT: Roger R. Lafrenière, Esquire
Prothonotary**

BETWEEN:

771112 ALBERTA LTD.

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

[1] A case management conference was held this day by teleconference with counsel for the parties to address appropriate procedural steps and timing of those steps.

[2] By way of background, the Plaintiff seeks by way of statement of claim to appeal an assessment of penalties and interest pursuant to section 63(3) of the *Canada Petroleum Resource Act*, R.S.C. 1985, c. 36 (CPRA). The Defendant submits that the wrong originating document was issued and that the Plaintiff should instead have filed a notice of appeal. The Defendant also

maintains that the procedure set out in Part 6 of the *Federal Courts Rules* (FCR) should govern the proceeding.

[3] As a general rule, an appeal is commenced by the issuance of a notice of appeal: Rule 63(1)(e) of the FCR. However, subsection 63(1) of the CPRA provides that the interest holder may appeal to this Court “in the manner set out in section 48 of the *Federal Courts Act*” to have the assessment varied or vacated. Similar wording regarding the procedure to be used to appeal an assessment can be found at section 81.28 of the *Excise Tax Act*, R.S.C. 1985, c. E-15.

[4] Subsection 48(1) of the *Federal Courts Act*, R.S., 1985, c. F-7, s. 1; 2002, c. 8, s. 14 (FCA) specifies that a proceeding against the Crown shall be instituted by filing “a document that may be in the form set out in the schedule.” The schedule to the FCA simply reproduces the form of a statement of claim. Since the CPRA prescribes only one form to bring an appeal under ss. 63(1), I am satisfied that the proper originating document was used by the Plaintiff in commencing the present proceeding.

[5] Where a statute requires a proceeding to be commenced by an originating document different from that prescribed by Rule 63(1), the rules applicable to the originating document apply in respect of that document: Rule 63(2). The appeal having been instituted by way of statement of claim as required by subsection 63(1) of the CPRA, it follows that the present proceeding must be governed by Part 4 of the FCR. This is consistent with the procedure adopted by this Court in an earlier proceeding brought under ss. 63(1) of the CPRA bearing Court File No. T-85-03.

ORDER

THIS COURT ORDERS that the parties shall submit, either jointly or separately, and no later than July 21, 2010, a proposed schedule for completion of the next steps in accordance with Part 4 of the *Federal Courts Rules*.

“Roger R. Lafrenière”

Prothonotary

SOLICITORS OF RECORD

DOCKET: T-736-10

STYLE OF CAUSE: 771112 ALBERTA LTD. v.
HER MAJESTY THE QUEEN

**CASE MANAGEMENT CONFERENCE HELD
VIA TELECONFERENCE ON JULY 8, 2010
FROM CALGARY, ALBERTA AND VANCOUVER, BRITISH COLUMBIA**

**REASONS FOR ORDER
AND ORDER:** LAFRENIÈRE P.

DATED: July 8, 2010

ORAL REPRESENTATIONS BY:

Mr. Ronald J. Robinson FOR THE PLAINTIFF

Mr. Mr. Raymond Lee FOR THE DEFENDANT

SOLICITORS OF RECORD:

Ronald J. Robinson FOR THE PLAINTIFF
Barrister & Solicitor
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